

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
SUBURBAN NATURAL GAS COMPANY TO
ESTABLISH THE TAX CREDIT RIDER.

CASE NO. 20-43-GA-ATA

IN THE MATTER OF THE APPLICATION OF
SUBURBAN NATURAL GAS COMPANY'S
IMPLEMENTATION OF CERTAIN MATTERS
RELATING TO THE TAX CUTS AND JOBS
ACT OF 2017.

CASE NO. 20-44-GA-UNC

FINDING AND ORDER

Entered in the Journal on September 9, 2020

I. SUMMARY

{¶ 1} The Commission approves Suburban Natural Gas Company's application to implement an income tax credit mechanism rider, subject to Staff's recommendations.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Suburban Natural Gas Company (Suburban or the Company) is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4909.18 provides, in part, that a public utility may file an application to establish or change any rate, charge, regulation, or practice. If the Commission determines that the application is not for an increase in any rate and does not appear to be unjust or unreasonable, the Commission may approve the application without the need for a hearing.

{¶ 4} The Tax Cuts and Jobs Act of 2017 (TCJA), signed into law on December 22, 2017, provides for a number of changes in the federal tax system. Most notably, the federal corporate income tax rate is reduced from 35 percent to 21 percent, effective January 1, 2018.

{¶ 5} On January 10, 2018, the Commission opened an investigation in order to study the impacts of the TCJA on the Commission's jurisdictional rate-regulated utilities and to determine the appropriate course of action to pass benefits on to ratepayers. *In the*

Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies, Case No. 18-47-AU-COI (TCJA Case).

{¶ 6} Furthermore, on September 26, 2019, the Commission approved a Stipulation in Suburban's most recent rate case. The Stipulation, among other things, required that Suburban file an application not for an increase in rates to establish a tax credit rider to return to customers the over-collection of income taxes resulting from the enactment of the TCJA. *In re Suburban Natural Gas Co.*, 18-1205-GA-AIR, et al. (*Rate Case*), Opinion and Order (Sept. 26, 2019) at ¶ 75.

{¶ 7} On January 10, 2020, pursuant to R.C. 4909.18, Suburban filed an application to resolve matters relating to the TCJA and establish the TCJA Credit Rider (TCJA Rider). In the application, Suburban states that it has partially implemented the impact of the TCJA by agreeing to a stipulated revenue requirement in the *Rate Case*, which included necessary adjustments to the federal current income tax rates and gross revenue conversion factor. Suburban indicates that the TCJA Rider will resolve remaining issues associated with the TCJA, which include all distribution-related excess accumulated deferred income taxes (EDIT) and any potential regulatory liability. The TCJA Rider will be allocated to customer classes based on a percentage of base distribution revenues and will be trued up annually. The TCJA Rider will be populated with an amount calculated on a projected level for the calendar year. Finally, Suburban requests that the Commission approve its application without a hearing.

{¶ 8} On January 29, 2020, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene.

{¶ 9} On April 6, 2020, Staff filed its review and recommendation.

{¶ 10} By Entry dated April 9, 2020, the attorney examiner granted OCC's motion for intervention and established the following procedural schedule: May 8, 2020, as the deadline for all interested persons to file motions to intervene; May 15, 2020, as the deadline

for intervenors to file comments; May 29, 2020, as the deadline for reply comments to be filed.

{¶ 11} On May 15, 2020, OCC filed its comments. As noted below, OCC is opposed to Suburban returning tax savings deferred from January 1, 2018, through September 30, 2019, over a period of 31 months (OCC Comments at 1-4).

{¶ 12} On May 26, 2020, Suburban filed reply comments.

B. Summary of Staff's Review and Recommendation

1. RETURN OF NORMALIZED EDIT

{¶ 13} Staff reports Suburban's balance of normalized EDIT as of December 31, 2017, is approximately \$1.6 million. Because Suburban's records do not contain sufficient detail to amortize the normalized EDIT in accordance with the Average Rate Assumption Method (ARAM), Suburban will amortize normalized EDIT in accordance with the weighted average remaining life method (alternative method). Staff states the actual amount of normalized EDIT refunded to customers through the TCJA Rider will include the gross revenue conversion factor of 1.265823 established in the *Rate Case* and will be allocated among customers classes based on a percentage of base distribution revenue. (Staff Report at 2-3.)

{¶ 14} Staff recommends that normalized EDIT include only balances required to be amortized in accordance with ARAM, or acceptable alternative method, with such balances being based on the balance as of December 31, 2017. Because the Company's records do not contain sufficient information to apply ARAM, Staff supports Suburban's use of the alternative method to amortize normalized EDIT, which is permitted under the TCJA. However, Staff finds it necessary to emphasize Suburban's responsibility for ensuring that the amortization of normalized EDIT comports to the normalization requirements outlined in the TCJA. Finally, Staff supports Suburban's proposal that the normalized EDIT refund include a gross up for federal income taxes using the gross revenue conversion factor from

the *Rate Case*. (Staff Report at 4.)

2. RETURN OF NON-NORMALIZED EDIT

{¶ 15} Staff indicates Suburban will amortize the non-normalized EDIT asset of \$233,650 over a period of 120 months (ten years). The amount collected from customers through the TCJA Rider will include the gross revenue conversion factor of 1.265823 established in the *Rate Case*. Additionally, Staff explains that the non-normalized EDIT will be allocated among customers classes based on a percentage of base distribution revenue. While otherwise supporting Suburban's proposal, Staff additionally recommends that non-normalized EDIT be based on the balance as of December 31, 2017. (Staff Report at 3-4.)

3. STUB PERIOD

{¶ 16} Staff explains Suburban deferred about \$454,785 in tax savings from January 1, 2018, through September 30, 2019 (Stub Period), which is the date on which new distribution rates became effective under the *Rate Case*. In order to mirror the phase-in of the revenue increase established in the *Rate Case*, Suburban proposes to refund the Stub Period over the same period as the phase-in, or approximately 31 months.¹ In accordance with the Stipulation in the *Rate Case*, the Stub Period will include a one-time carrying charge on the monthly balance of deferrals to reflect the time lag in implementing the federal income tax savings into rates. Suburban has calculated the carrying charges to be approximately \$26,033 as of December 31, 2019. Therefore, the total Stub Period balance, including carrying charges, is estimated to be \$480,819 as of December 31, 2019. The credit will be refunded to customers following the same allocation methodology as the refund of normalized and non-normalized EDIT. Suburban will begin returning all the amounts described above upon approval of the application. (Staff Report at 3.)

{¶ 17} While Staff typically recommends that the Stub Period be refunded to

¹ According to the application, the calculation of 31 months was based upon the assumption that the TCJA Rider would be approved and become effective March 1, 2020 (App. at 5, fn. 10).

customers over a period of 12 months, with carrying charges accruing on the balance until refunds begin, Staff finds that Suburban's proposal of refunding the Stub Period over 31 months to mirror the phase-in authorized in the *Rate Case* is reasonable to minimize financial impact on a relatively small natural gas company. However, to recognize the comparatively longer lag in customers receiving refunds of the Stub Period, Staff recommends that carrying charges accrue for the duration of the refund. With this refinement, Staff supports Suburban's 31-month period proposal. (Staff Report at 4.)

{¶ 18} Next, Staff states that Suburban calculated the Stub Period balance by allocating the annual tax savings entirely to the commodity charge, rather than splitting it proportionally between the commodity charge and customer charge. Although Staff disagrees with Suburban's rationale for calculating the Stub Period based on this application of tax savings, Staff concluded that changing the allocation of tax savings between the commodity charge and customer charge would have a negligible effect on the balance of the Stub Period. Therefore, Staff does not oppose the balance of the Stub Period as calculated by the Company. (Staff Report at 4-5.)

4. ALLOCATION OF REFUNDS

{¶ 19} Staff recommends that the TCJA Rider be allocated to customers based on the percentage of base distribution revenue from the *Rate Case*. Based on the Company's workpapers, Suburban's proposed allocation of the refunds through the TCJA Rider is based on actual revenues from January 1, 2018, through September 30, 2019. By using actual revenues from this time period, the Company's proposal is based on revenue allocations from its previous rate case. Staff finds it more appropriate to allocate the refunds in the TCJA Rider based on the Stipulation in the *Rate Case* rather than using revenue allocations in effect for the time period described above. (Staff Report at 5.)

5. RATE DESIGN

{¶ 20} Staff notes that Suburban's application does not specifically address the rate

design of the TCJA Rider. Staff recommends that the TCJA Rider credit be reflected as a percentage of base distribution, in accordance with the Stipulation in the *Rate Case*. (Staff Report at 3, 5.)

6. TRUE-UP OF PASS BACK AMOUNTS AND ACTUAL TCJA SAVINGS

{¶ 21} Staff recommends that the TCJA Rider be trued up annually in order to mitigate large variances between the amount refunded through the TCJA Rider and the actual tax impact of the TCJA. This annual true-up would ensure that the appropriate amount is refunded to customers. (Staff Report at 5.)

C. OCC's Comments

{¶ 22} OCC finds Suburban's 31-month period proposal unreasonable because of the delay in giving customers their money back, especially during the COVID-19 pandemic. OCC notes many Ohio utility customers began seeing benefits from the TCJA more than two years ago; however, Suburban's customers are still waiting for relief. OCC believes Suburban violated the October 24, 2019 Finding and Order issued in the *TCJA Case*, which ordered Ohio utilities to file an application regarding the TCJA by January 1, 2019, by initiating this proceeding on January 10, 2020, more than a year late. OCC also calls into question Suburban's agreement with Staff in the *Rate Case* Stipulation, which allowed the Company to file its TCJA application in the future, instead of the deadline imposed by the *TCJA Case*. OCC surmises that, if Suburban had filed this case by January 1, 2019, instead of on January 10, 2020, customers would already be receiving bill credits for the TCJA. Given Suburban has created this delay, OCC urges the Commission to take action to get the refunds back to customers as quickly as possible.

{¶ 23} Further, OCC notes Staff typically recommends the Stub Period be refunded to customers over a 12-month period, with carrying charges. OCC requests the Commission to reject the rationale of a longer payback period for several reasons. First, according to OCC, the longer the payback period, the more current customers are subsidizing future

customers. OCC explains the overpayments for the Stub Period occurred from January 1, 2018, to September 30, 2019, when Suburban customers were effectively overcharged at a 35 percent tax rate instead of 21 percent. Since it is already 2020, OCC estimates the 31-month refund period will mean customers will still be receiving refunds in 2021. OCC surmises there will be some customers who were overcharged in 2018 and 2019, but will not be Suburban customers in 2023, and thus, they will never get their money back. Likewise, any new customers that move into the Suburban service area between 2020 and 2023 will get a windfall. OCC believes the longer the payback period, the more of a problem this inter-generational subsidy becomes. Finally, OCC argues the Commission recently approved the Stipulation in the *Rate Case* and, consequently, Suburban cannot claim to be suffering from financial difficulties just months after the approval.

{¶ 24} In its reply comments, Suburban argues that OCC disregards that the Commission permitted the Company to address TCJA issues in a separate proceeding. *Rate Case*, Opinion and Order (Sept. 26, 2019) at ¶ 141. Additionally, Suburban notes the Commission has indicated TCJA impacts should be assessed on an individual company basis. *TCJA Case*, Finding and Order (Oct. 24, 2018) at ¶¶ 28-29. Finally, Suburban contends current customers will always end up subsidizing future customers when processing refunds.

III. COMMISSION CONCLUSION

{¶ 25} Initially, the Commission notes neither Staff nor OCC opposes Suburban's application with regard to the return of normalized EDIT (calculated using the alternative method), return of non-normalized EDIT, true-up of pass back amounts, and actual TCJA savings. Consequently, we find Suburban's approach reasonable but direct the Company to incorporate Staff's suggestions with regard to these issues.

{¶ 26} Turning to OCC's comments regarding the proposed 31-month refund period, we find that the need for customers to receive relief over a 12-month period should be balanced with the fact that Suburban is a relatively small natural gas company. Initially, we

clarify that the 31-month period originally proposed by Suburban in its application assumed that the TCJA Rider would be approved and become effective March 1, 2020. Here, Staff has recommended the Stub Period be refunded via the TCJA Rider for a length of time that mirrors the phase-in of base rates approved in the *Rate Case*. The phase-in of base rates has an end date of September 2022. *Rate Case*, Opinion and Order (Sept. 26, 2019) at 7-8. It follows that the TCJA Rider, which will be implemented after the issuance of this Finding and Order, will be in effect for a period of approximately 24 months. Further, in the *TCJA Case*, we acknowledged that a “one-size-fits-all” approach was inadequate to address the issues raised by the TCJA and, instead, we recommended a case-by-case approach to account for each individual utility’s unique circumstances. *TCJA Case*, Finding and Order (Oct. 24, 2018) at ¶¶ 28-29. In fact, in certain situations, we have approved refund periods longer than 12 months. See *In re Vectren Energy Delivery of Ohio, Inc. for Approval of a Tax Savings Credit Rider*, Case No. 19-29-GA-ATA, Finding and Order (July 1, 2020) (approving an 18-month TCJA rider); *In re Ohio Power Company’s Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1007-EL-UNC, et al., Finding and Order (Oct. 3, 2018) (approving a 14-month TCJA rider). With regard to OCC’s contention that a longer refund period may mean some customers will not receive refunds because they may move out of Suburban’s service area and some residents who move in the area will receive a windfall, the very nature of refunds assumes such a risk. Regardless of the time period, customers will move in and out of Suburban’s service area. Thus, even though Staff typically recommends that the Stub Period be refunded to customers over a 12-month period, here we recognize the need to be flexible given the potential financial impact on Suburban.

{¶ 27} Further, Suburban’s current financial situation also supports a longer refund period. After Staff issued its recommendation in this proceeding, Suburban filed an application to restructure its long-term debt facility and its secured line of credit in Case No. 20-1121-GA-AIS. *In re Suburban Natural Gas Company for Authority to Establish Long-Term Financial Arrangements*, Case No. 20-1120-GA-AIS, et al. (*Debt Case*), Finding and Order (July 29, 2020). In the *Debt Case*, Suburban provided background regarding its deteriorating

financial status, explaining that, in the *Rate Case*, it agreed to a three-year phase-in of the full return and expenses associated with a \$8.5 million pipeline extension. However, in December 2019, less than three months after the rates approved by the Commission in the *Rate Case* went into effect, Suburban defaulted on a long-term loan agreement with Huntington National Bank (Huntington) previously approved in Case No. 17-2321-GA-AIS. Suburban, therefore, requested both the authority to restructure its long-term debt facility with Huntington and approval from the Commission to implement the rates previously deferred as a result of the *Rate Case* phase-in. Ultimately, Suburban withdrew its application for emergency rate relief and proceeded with its application for approval to restructure its long-term financial arrangement with Huntington on a standalone basis. Approving the restructuring, we found the revised long-term financial arrangement was necessary for Suburban to secure sufficient liquidity to meet working capital needs. *Debt Case*, Finding and Order at ¶¶ 7-8, 11, 18. Therefore, taking into consideration Suburban's unique financial situation and status as a relatively small natural gas company, we find a 24-month refund period reasonable. Additionally, we adopt Staff's recommendation that carrying charges accrue for the duration of the refund. (Staff Report at 4.)

{¶ 28} Finally, we direct Suburban, pursuant to Staff's recommendation, to reflect the TCJA Rider credit as a percentage of base distribution, in accordance with the Stipulation in the *Rate Case*, and to true up the Rider annually (Staff Report at 3, 5). Therefore, upon consideration of the application, OCC's comments regarding the TCJA Rider, and Staff's review and recommendation, the Commission finds that Suburban's application for a TCJA Rider is not for an increase in rates under R.C. 4909.18 and that the application is reasonable and should be approved, subject to Staff's recommendations proffered throughout its report. Further, the Commission finds that it is unnecessary to hold a hearing in this matter.

IV. ORDER

{¶ 29} It is, therefore,

{¶ 30} ORDERED, That Suburban's application to implement the TCJA Rider be approved, subject to Staff's recommendations. It is, further,

{¶ 31} ORDERED, That Suburban be authorized to file the tariff, in final form, consistent with this Finding and Order. Suburban shall file one copy in this case docket and one copy in its TRF docket. It is, further,

{¶ 32} ORDERED, That the effective date of the new tariff shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 33} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 34} ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

AS/kck

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in

Case No(s). 20-0043-GA-ATA, 20-0044-GA-UNC

Summary: Finding & Order approving Suburban Natural Gas Company's application to implement an income tax credit mechanism rider, subject to Staff's recommendations. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio